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Inc. and Third-Party Plaintiff DC Comics*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHRISTOPHER WOZNIAK,

Plaintiff,

v.

WARNER BROS. ENTERTAINMENT INC.,

Defendant.

DC COMICS,

Third-Party Plaintiff,

v.

CHRISTOPHER WOZNIAK,

Third-Party Defendant.

Case No. 1:22-cv-08969-PAE

**LOCAL CIVIL RULE 56.1
STATEMENT OF FACTS IN
SUPPORT OF WARNER BROS.
ENTERTAINMENT INC. AND DC
COMICS' MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 56.1 and Fed. R. Civ. P. 56(a), Defendant Warner Bros. Entertainment Inc. ("Warner Bros.") and Third-Party Plaintiff DC Comics (collectively, "Movants") hereby submit this statement of material facts for which there is no genuine issue to be tried:

1. On March 30, 1939, DC Comics published the first Batman story in *Detective Comics* No. 27. (Joint Statement of Undisputed Facts, Dkt. No. 56 (“Joint Statement”) ¶ 1.) Since that time, Batman, including the Batman character, his alter ego Bruce Wayne, his butler Alfred Pennyworth, his ally Commissioner Gordon, and many villains, including the Riddler and the Joker, has become one of DC Comics’ most successful titles, and Batman one of the most popular and successful characters in comic book history. (Declaration of Paul Levitz (“Levitz Dec.”) ¶ 6.)

2. Over the past 84 years, DC Comics has created and published hundreds of millions of copies of comic books, newspaper strips, magazines, and graphic novels worldwide containing depictions of, and stories about, Batman and his universe. (Joint Statement ¶ 2; Levitz Dec. ¶ 7.)

3. DC Comics has featured Batman in monthly comics such as *Batman*; *Batman: Gotham Adventures*; *Batman: Gotham Knights*; *Batman: Legends of the Dark Knight*; *Batman Beyond*; and *Detective Comics* (Joint Statement ¶ 3), as well as in dozens of limited series, one-shot comics, graphic novels, and special editions. (Levitz Dec. ¶ 8.)

4. In addition, between 1943 and 1990, Batman “starred” in four motion pictures and serials released theatrically throughout the world: *Batman* (1943), *Batman and Robin* (1949), *Batman* (1966), and *Batman* (1989). (Joint Statement ¶ 4; Levitz Dec. ¶ 9.) Batman has starred in more than ten additional theatrical feature films since 1990. (Levitz Dec. ¶ 9.)

5. Between 1966 and 1990, DC Comics licensed the Batman character to appear in a number of live action and animated television shows broadcast throughout the world, including *Batman* (1966-68), *The Batman/Superman Hour* (1968-69), *The Adventures of Batman* (1969),

Super Friends (1973-77) and *The New Adventures of Batman* (1977-78) as well as several additional shows after 1990. (Joint Statement ¶ 5; Levitz Dec. ¶ 10.)

6. While updates have been made to Batman throughout the years, he maintains certain iconographic features (for example, his costume) and literary features (for example, his backstory of witnessing the murder of his parents which drives him to a life of fighting crime), such that he has remained distinct and recognizable regardless of the story in which he appears. (Levitz Dec. ¶ 11.)

7. At all relevant times, DC Comics and its predecessors-in-interest have owned all right, title and interest in and to all copyrights and trademark rights in the character of Batman, including his literary and graphic depictions. (*Id.* ¶ 12.) Based on these rights, it has been contrary to law for any third party to make any commercial use of the Batman character in any medium without DC Comics' authorization, and DC Comics has enforced its rights against infringers for decades. (*Id.*)

8. In 2022, DC Comics' licensee Warner Bros. released the motion picture *The Batman*. (Joint Statement ¶ 6; Declaration of Jay Kogan ("Kogan Dec.") ¶ 5; Ex. A to the Declaration of James D. Weinberger ("Weinberger Dec.") (*The Batman* motion picture).) The film did not continue the stories of prior Batman movies; rather, it was a "reboot" of Batman as a film franchise and featured a new take on the character. (Joint Statement ¶ 6; Declaration of Chantal Nong ("Nong Dec.") ¶ 5.)

9. Critically acclaimed writer and director Matt Reeves was hired to make *The Batman* in 2017. (*Id.* ¶ 6; Declaration of Matt Reeves ("Reeves Dec.") ¶¶ 5-6.) Wanting to create a film personal to him, Reeves conceived an original story and wrote the screenplay with two

partners, Mattson Tomlin and Peter Craig, with no direction or source material for its plot provided by either DC Comics or Warner Bros. (Reeves Dec. ¶¶ 6, 7, 11.)

10. And while Warner Bros. brought *The Batman* to life, its role with respect to the screenplay was limited to meetings and notes with suggestions for refining what Reeves and his co-writers created; indeed, the basic plot and storyline for the screenplay was created by Reeves without direction from Warner Bros. (*Id.* ¶ 7, 11; Nong Dec. ¶ 7.)

11. *The Batman* depicts Batman in his early days as a crimefighter, with his skills not yet developed in a manner familiar to film audiences. (Reeves Dec. ¶ 14.) The Riddler, a Batman villain since his first appearance in 1948 (Levitz Dec. ¶ 20), leaves Batman a series of cryptic clues and puzzles contained in killings targeting the elite of Gotham (Reeves Dec. ¶ 14), Batman's fictional home. (Levitz Dec. ¶ 21.) Following this mystery leads Batman down a road of personal discovery and Batman encounters other well-known characters from his universe including Selina Kyle (Catwoman), Oswald "Oz" Cobblepot (The Penguin), and mobster Carmine Falcone. (Reeves Dec. ¶ 14.) In investigating, he mistakenly comes to believe that the Riddler has uncovered his secret identity of Bruce Wayne, but this turns out to be wrong: the truth is that Batman's desire to find justice in an unjust world unintentionally inspired the Riddler to target the elite of Gotham who he considered corrupt (including Batman's alter ego, Bruce Wayne). *Id.* The Riddler, through social media, in turn radicalizes his followers to flood Gotham and attempt to assassinate Gotham's mayor-elect Bella Reál, leading to a confrontation between Batman and these followers in Gotham City Garden. *Id.* After defeating the Riddler's followers and saving Reál, Batman vows to inspire hope in Gotham. *Id.* The film portrays a version of Gotham grounded in reality but with a horror-bend and features Hitchcock-inspired sounds and visuals that give the viewer a sense of being inside that world. *Id.* ¶ 15. For example,

in depicting a car chase involving the Batmobile, the camera gives a point-of-view from the side of the Batmobile, creating an immersive experience (*i.e.*, the picture shakes during the chase and when driving through water, it would actually get on the camera lens). *Id.*

12. Artist Christopher Wozniak performed freelance work for DC Comics at various times between 1985 to 1999. (Joint Statement ¶ 8; Transcript of Deposition of Christopher Wozniak, July 12, 2023 (Weinberger Dec. Ex. B) (“Wozniak Dep.”), at 15:5-16:18.). He was not engaged as a writer. (Joint Statement ¶ 9; Levitz Dec. ¶ 23; Wozniak Dep. at 64:6-9.)

13. Wozniak’s paid work was limited to creating art for comic books (in the industry, the tasks referred to as “inking” and “penciling”). (Wozniak Dep. at 9:16-24, 47:21-48:17, 50:3-16; Joint Statement ¶ 9.)

14. For each art job he completed, Wozniak signed a contract under which he was paid. (Wozniak Dep. at 10:24-11:16, 51:5-13, 53:25-54:5, 60:6-22, 61:18-23.). These contracts confirmed that Wozniak’s work was “derivative of preexisting material” owned by DC Comics (defined as “Preexisting Material”) and that he “shall not have, acquire or claim any right whatsoever in any of the Preexisting Material and shall not have the right or privilege to use any of the Preexisting Material except as provided herein or as DC otherwise consents in writing.” (Wozniak Dep. at 55:18-56:19; *id.* Ex. 2 (September 20, 1991 agreement between Mr. Wozniak and DC Comics) (Weinberger Dec. Ex. C) ¶ 7(B); Kogan Dec. ¶ 7, Ex. M (same)) (Wozniak Dep. at 57:18-58:12, 59:3-17; *id.* Ex. 3 (December 2, 1992 agreement between Mr. Wozniak and DC Comics) (Weinberger Dec. Ex. D) ¶ 7(B); Kogan Dec. ¶ 8, Ex. N (same).)

15. Though he claims to have occasionally written and submitted stories to DC Comics “on spec,” none were ever accepted or published (Joint Statement ¶ 9; Levitz Dec. ¶¶ 23-24); a short Batman story, allegedly written in 1990 and the subject of Wozniak’s claims (the

“Story”), is among them. (Wozniak Dep. at 49:5-8, 82:9-23, 220:2-6; *id.* Ex. 5 (Weinberger Dec. Ex. E) (Copyright Office deposit copy of the Story).)

16. The Story is about “[a]n older” 60-year-old Batman, along with other similarly aged characters. (Wozniak Dep. Ex. 5 (Weinberger Dec. Ex. E) at 0015. It begins with Batman discovering scores of bodies and a clue from the Riddler, who has returned after a 20-year absence. *Id.* This clue sends Batman on a series of six “trials” each connected with a riddle. *See id.* at 0015, 0024. Throughout these trials, Gotham is described as decaying and corrupted, and the world around Gotham is infected with a virus that has created global instability. *Id.* at 0016-18. The answers to the riddles reveal that the Riddler has discovered Batman’s alter ego of Bruce Wayne and that the Riddler, by bringing about Armageddon, hopes to find the answer to what happens in the afterlife. *Id.* at 0025-26. The story ends with Batman and the Riddler engaging in hand-to-hand combat. *Id.* at 0027-29. Batman eventually wins this fight but decides not to kill the Riddler and return to fighting crime in Gotham. *Id.* at 0029. It is then revealed that the Joker was behind the Riddler’s entire plot. *Id.*

17. Wozniak claims to have pitched the Story to Archie Goodwin, the primary editor for Batman at the time, in 1990; Goodwin passed on it. (Wozniak Dep. at 84:11-85:6, 133:2-9, 134:19-135:12, 137:16-18.)

18. Wozniak also claims to have presented the Story to other DC Comics editors from time to time through 1999 (Wozniak Dep. at 144:14-145:24), but it was never accepted for publication. (Joint Statement ¶ 9; Levitz Dec. ¶ 23; Wozniak Dep. at 64:6-9.)

19. Other than through this lawsuit, DC Comics’ current executives have no knowledge of the Story and no copies of the Story were found in its records, nor were any copies

found in Warner Bros.’ records. (Kogan Dec. ¶ 9; Nong Dec. ¶ 12.) Similarly, other than through this lawsuit, Matt Reeves has no knowledge of the Story or Wozniak. (Reeves Dec. ¶¶ 16-17.)

20. Wozniak testified that he emailed a copy of the Story to Michael Uslan in April of 2008 after briefly meeting him during New York City Comic Con, but received no reply. (Wozniak Dep. at 151:3-17, 151:25-152:7, 153:4-16.)

21. Uslan, who is not an employee of either DC Comics or Warner Bros., acquired the rights to exploit Batman in film in the 1970s; as a result, he has been listed as an executive producer of *The Batman* (along with many other Batman films for decades) despite not having any involvement in the development or production thereof. (Nong Dec. ¶¶ 9-11.)

22. Throughout its entirety, elements spanning hundreds of copyrighted works by DC Comics, including Batman and his alter ego Bruce Wayne, the Riddler, Gotham, Commissioner Gordon, Barbara Gordon, Harley Quinn, the Batcave, the Batmobile, Alfred, and the Joker (Levitz Dec. ¶¶ 18-21), have been embedded in nearly every single sentence of the Story (Wozniak Dep. Ex. 5 (Weinberger Dec. Ex. E)) as confirmed by Wozniak during his deposition: “I wanted it to be a new part of the Batman universe. I thought it would be, you know – at the time I wrote it I thought I had written the best Batman story ever.” (Wozniak Dep. at 125:4-7; *see also id.* at 49:7-8, 68:12-18, 87:12-17, 124:18-24, 125:10-23, 240:17-20.)

23. For example, Wozniak claims he “reinvented [Riddler] as a serial killer and a mass murderer[.]” (Wozniak Dep. at 71:6-23.) But he acknowledged explicitly this was a “version” of the Riddler not an independent character. (*Id.* at 71:8-9.) The Ridder is a creation of DC Comics. (*Id.* at 71:6-7; Levitz Dec. ¶¶ 6, 20.)

24. Wozniak sought to create a “clean” version of the Story without Batman characters to attempt to sell to another publisher but that version is not the subject of the present

suit. (Wozniak Dep. at 126:17-127:1, 138:18-139:11, 220:20-221:14; *id.* Ex. 12 (Weinberger Dec. ¶ 8, Ex. G).) Wozniak never submitted the “clean” version to anyone at DC Comics or to Usan. (*id.* at 126:17-127:1.)

25. Wozniak filed the application to register the Story with the Copyright Office without disclosing that the Story was derivative of Batman, and received a registration for the Story. (Wozniak Dep. at 101:22-102:13, 102:24-103:15; Wozniak Dep. Ex. 7 (Weinberger Dec. Ex. F) (Copyright Registration issued to Wozniak).)

26. Matt Reeves did not see the Story and had not heard of Wozniak before writing *The Batman*. (Reeves Dec. ¶¶ 16-17.) Reeves had no contact with DC Comics during the creation or production of *The Batman* and to this day has never had any contact with Usan. *Id.* ¶¶ 12-13. Moreover, neither DC Comics nor Usan had any role in drafting the screenplay for *The Batman*; indeed, Usan had no role at all beyond receiving a contractually required production credit. *Id.*; Nong Dec. ¶¶ 8-11.

27. Wozniak has failed to identify any specific expression from the Story which was used in *The Batman*, relying instead on alleged high-level similar “plot points” (Wozniak Dep. at 235:14-236:16) and concepts which are ideas not expression. (*See* Plaintiff and Third-Party Defendant Christopher Wozniak’s Responses and Objections to Movants’ Second Set of Interrogatories served August, 16, 2023 (Weinberger Dec. Ex. H).)

28. As an example, Wozniak claims that both the Story and *The Batman* feature “a character named Riddler that is motivated by the loss of a surrogate family to seek retribution by wiping out society with a Biblically styled Judgment Day/Armageddon.” *Id.* at 6. The expression of “Judgment Day/Armageddon” in Wozniak’s Story is the potential destruction of the entire

world through a virus and war (Wozniak Dep. Ex. 5 (Weinberger Dec. Ex. E) at 0026) whereas the finale in *The Batman* is a flood. (Weinberger Dec. Ex. A at 2:24:48-2:26:11.)

29. Neither DC Comics nor Warner Bros. directed or controlled the writing process. (Reeves Dec. ¶¶ 7, 11-12). Warner Bros. provided only notes on particular scenes, a list of Batman's gadgets that have appeared in film and television previously, and a sampling of published Batman comic books, all of which Reeves could take or leave at his discretion. (*Id.* ¶ 11.) As for DC Comics, though there were limited communications with Warner Bros. regarding the film (which occurred only after the script was complete and did not involve plot changes or additions (Nong Dec. ¶ 8)), Reeves himself had no contact with personnel from DC Comics while writing the screenplay. (Reeves Dec. ¶ 12.) Nor did it contribute any creative material to the screenplay (*Id.*)

30. Indeed, Reeves took on *The Batman* because he wanted to create his own personal take on Batman and would have declined the project if he could not. *Id.* ¶¶ 5-6. As part of that effort, Reeves he took inspiration from a variety of sources and genres when writing *The Batman*, including the real-world story of the Zodiac killer, 1970s noir film such as *Taxi Driver* and *Chinatown*, and his own familiarity with pre-existing Batman works of DC Comics (comics) and Warner Bros. (films and television series). *Id.* ¶ 7.

31. DC Comics holds many thousands of copyright registrations for Batman works. (Kogan Dec. ¶ 4.)

32. Wozniak created a Batman story and submitted it to DC Comics for publication because he knew he could not publish it without permission. (Wozniak Dep. at 143:22-144:1.)

33. Wozniak specifically had access to Batman characters and story elements as a freelancer of DC Comics. (Wozniak Dep. at 15:14-19; Wozniak Dep. Ex. 2 (Weinberger Dec. Ex. C).)

34. Wozniak has admitted:

Q. You wrote this to be a Batman story, correct?

A. I initially pitched it as a Batman story.

Q. Well, I'm talking about what's written down, not what's pitched, what's written.

A. Well, like I explained several times, this is, like, a reimagining of the Batman universe.

(Wozniak Dep. at 124:18-24.)

35. Batman's specific characteristics (*i.e.* that he is a detective and crime fighter without superpowers; wears a cowl; has an alter ego of Bruce Wayne; and refrains from killing his enemies despite them attempting to kill him (Levitz Dec. ¶¶ 18-19)) pervade the Story. (*See, e.g.*, Wozniak Dep. Ex. 5 (Weinberger Dec. Ex. E) at 0016 ("BATMAN orders the BATMOBILE to fire a sonic weapon."); *id.* at 0018 ("BATMAN drops a ray-gun smart-bomb which causes excruciating pain from an invisible beam"); *id.* at 0023 ("Immediately [Batman] draws blood to analyze"); *id.* at 0026 ("BATMAN has to go after the RIDDLER and hope he can stop him and to [sic] return to the BATCAVE in time for the ANTIDOTE"); *id.* at 0029 ("But sure enough the RIDDLER is not dead. He opens his eyes to see BATMAN there with his cowl down, addressing him as BRUCE WAYNE.").)

36. Moreover, the Riddler has been sufficiently delineated as a Batman villain with an alter ego of Edward Nigma who antagonizes Batman by committing crimes that incorporate riddles and puzzles and uses question marks as his motif and calling card. (Levitz Dec. ¶ 20.) These delineated characteristics also appear throughout the Story. (*See, e.g.*, Wozniak Dep. Ex. 5

(Weinberger Dec. Ex. E) at 0015 (“The cause of death is bloodletting from numerous wounds in the shape of small QUESTION MARKS . . . After being absent for more than 20 years without a clue the RIDDLER returns!”); *id.* at 0020 (“And bitterly, the RIDDLER remembers how after all those years of contesting BATMAN and failing miserably he’d finally given up”); *id.* at 0022 (“RIDDLER: Solve the FIFTH RIDDLE and find out what’s going on. Then you can go forth in other words, to the greatest riddle.”).)

37. Wozniak removed Batman elements and characters in attempting to sell the Story to another publisher. (Wozniak Dep. at 126:17-127:1, 138:18-139:11; 220:20-221:14; *id.* Ex. 12 (Weinberger Dec. Ex. G).)

38. Wozniak’s his signed contracts with DC Comics contain the following provision:

“Artist acknowledges the Work shall be derivative of preexisting material including, without limitation, the name and pictorial and literary representations of fictional characters, companies, places and things (the “Preexisting Material”); that DC owns or otherwise has rights in the Preexisting Material; and that Artist would be unable to produce the Work without the Preexisting Material. Artist further acknowledges that Artist shall not have, acquire or claim any right whatsoever in any of the Preexisting Material and shall not have acquire or claim any right whatsoever in any of the Preexisting Material and shall not have the right or privilege to use any of the Preexisting Material except as provided herein or as DC otherwise consents in writing.”

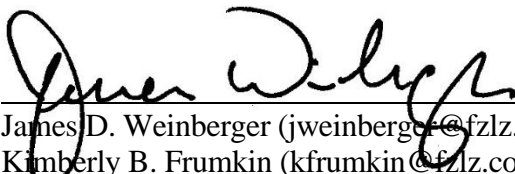
(Wozniak Dep. at 53:25-54:5, 55:18-56:19; Wozniak Dep. Ex. 2 (Weinberger Dec. Ex. C) ¶ 7(B); Kogan Dec. ¶ 7, Ex. M (same); Wozniak Dep. at 57:18-58:12, 59:3-17; Wozniak Dep. Ex. 3 (Weinberger Dec. Ex. D) ¶ 7(B); Kogan Dec. ¶ 8, Ex. N (same).)

39. Wozniak’s acknowledgment in his contracts with DC Comics (*supra* ¶ 38) demonstrate that he knew that all Batman material was owned by DC Comics, that he had no right to lay claim or use those materials without written consent (which he did not receive) (Levitz Dec. ¶ 24; Kogan Dec. ¶ 10), and that the Story was an unauthorized derivative. (*supra* ¶ 38).

40. Wozniak did not include these facts in his application to register the Story.
(Wozniak Dep. at 101:22-102:13, 102:24-103:15; Wozniak Dep. Ex. 7 (Weinberger Dec. Ex.
F).)

Dated: November 14, 2023
New York, New York

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